

A Joint Committee on Intelligence?

☐ **Yes**
☐ **No**

"I wish to be useful, and every kind of service necessary to the public good becomes honorable by being necessary. If the exigencies of my country demand a peculiar service, its claims to perform that service are imperious."

—Capt. Nathan Hale
1755-1776

The Nathan Hale Institute

Henry J. Hyde, Republican, of Bensenville, IL; born in Chicago, IL, April 18, 1924; graduated St. George High School, Evanston, IL, 1942; B.S.S., Georgetown University, 1947; J.D., Loyola University School of Law, Chicago, IL, 1949; ensign, U.S. Navy, 1944-46; commander, U.S. Naval Reserve (retired); admitted to the Illinois Bar, January 9, 1950; State representative in Illinois General Assembly, 1967-74; majority leader, Illinois House of Representatives, 1971-72; elected to the 94th Congress, November 5, 1974; reelected to each succeeding Congress.

David F. Durenberger, Republican, of Minneapolis, MN; born in St. Cloud, MN, August 19, 1934; attended private schools in Collegeville, MN; graduated St. John's Prep School, 1951; B.A., St. John's University, Collegeville, MN, 1955; J.D., University of Minnesota Law School, 1959; lieutenant, U.S. Army Intelligence, Fort Holabird, MD, 1956; captain, 407th Civil Affairs and Military Government Company, Fort Snelling, 1957-63; admitted to the Minnesota Bar in 1959; elected to the U.S. Senate, November 7, 1978, to complete the unexpired term of Hubert H. Humphrey for the term ending January 3, 1983; assumed office on November 8, 1978; reelected November 2, 1982.

PREFACE

One of the most important issues facing the United States Intelligence Community today is that of the extent and nature of legislative oversight. Is there too much? Too little? Could it be better? Could it be worse? The Intelligence Community must face the *fact* of legislative oversight—the real question then becomes the quality of such oversight.

There are those who believe that the form of congressional intelligence affects its quality. Representative Henry Hyde (R-Ill.), a member of the House Permanent Select Committee on Intelligence, believes that oversight has been beset by such serious problems that the United States intelligence effort itself is threatened. He believes that a "major overhaul" is needed. A former intelligence officer himself, Representative Hyde argues that the existing intelligence committees of the House and Senate should be merged into a single joint committee and to that end has introduced into the Congress House Joint Resolution 7.

Senator David F. Durenberger (R-Minn.), Chairman of the Senate Select Committee on Intelligence and also a former intelligence officer, disagrees with Representative Hyde. He believes that a joint intelligence committee would be counterproductive and would not ultimately be in the best interest of the Intelligence Community.

Representative Hyde explains his reasons for seeking a joint intelligence oversight committee. Senator Durenberger explains why he is opposed. Their views are published by the Nathan Hale Institute in the interest of fostering a better understanding of an issue important—perhaps critical—to the intelligence capability of the United States.

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 **Yes**

**HENRY J. HYDE
United States
House of Representatives**

A JOINT INTELLIGENCE COMMITTEE: AN IDEA WHOSE TIME IS NOW

My concern about Congress' current intelligence oversight arrangement was heightened by the furor last year over the mining of the Nicaraguan harbors. Whether one supported this action or not, that episode illustrates a problem of overwhelming importance. Specifically, one must ask how capable Congress is of practicing *responsible* oversight of intelligence activities once those activities are viewed as an integral part of a foreign policy that has become controversial and the subject of partisan debate.

After Vietnam and Watergate, both Houses of Congress decided to establish select committees on intelligence following extensive investigations of United States intelligence activities by panels headed by then Congressman Otis Pike and the late Senator Frank Church. Early on, both of these committees appeared to conduct their business in an amicable and bipartisan manner with little evidence of politicization. Unfortunately, such a turn of events was too good to last, and in recent years congressional oversight has become increasingly politicized.

One of the Intelligence Community's most illustrious and respected alumni, Admiral (Ret.) Bobby Inman, resigned in October 1982 as a consultant to the House committee because he felt it had become politically partisan. He cited as his specific reason for leaving the fact that he had not been consulted on a subcommittee report critical of the United States intelligence performance in Central America. In the Admiral's opinion, the report, which emphasized El Salvador, was "put out on party lines."

In his resignation announcement reported in the October 15, 1982, edition of the *Washington Post*, Inman also indicated that the congressional committees' oversight of the intelligence agencies must be nonpolitical in order to earn public credibility. He went on to add, "If the country doesn't establish a bi-partisan approach to intelligence, we are not going to face the problems of the next 50 years." Admiral Inman also offered some sage advice on avoiding leaks by recommending that "None of the staff should have any personal relations with the media."

"The necessity of procuring good intelligence is apparent and need not be further urged—all that remains for me to add is that you keep the whole matter as secret as possible." Those words of wisdom were written by George Washington in 1777, but I question today whether our modern, democratic form of government is able to keep any secrets, no matter how sensitive to our national interests. As we all know, the calculated, politically motivated leaking of highly sensitive information has become a Washington art form, and one that is not confined to Congress alone. A number of unauthorized revelations have come from various places in the executive branch as well.

With respect to the question of mining Nicaraguan harbors, leaks to the press caused a number of Senators, who knew about the mining activities when they voted for additional assistance for the Nicaraguan resistance forces, to turn around a few days later and disingenuously condemn the mining by voting for a resolution prohibiting it. Such election year pirouetting called into question the integrity of the oversight process and jeopardized the President's Central American aid program. Senator Leahy and I have strong differences of opinion regarding the President's foreign policy vis-a-vis Nicaragua, but the Senator was right on the mark when he said, "There were Senators who voted one way the week before and a different way the following week who knew about the mining in both instances and I think they were influenced by public opinion, and I think that's wrong and that is a lousy job of legislative action."

It appears the only way to mount a successful covert operation these days is for such an activity to have the nearly unanimous support of both intelligence committees and the involved agencies of the Intelligence Community. Anything short of that is doomed to failure, as opponents can selectively leak material to their acquaintances in the media with the expressed purpose of torpedoing the operation. Moreover, you can count on a flurry of these leaks just before anticipated congressional action on the issue in dispute.

What is especially disturbing is that those who are doing the leaking probably have never stopped to think what the short- and long-term implications of their revelations will be with respect to United States intelligence efforts, let alone to United States foreign policy. They are so preoccupied with scoring political points that they do not begin to realize how their actions may impact on the lives of United States intelligence and foreign service personnel overseas.

One of the cardinal rules of intelligence is that one does not confirm the accuracy of news accounts regarding sensitive intelligence operations. Yet, we saw in the wake of the initial press disclosures regarding the mining, the then Chairman of the House Permanent Select Intelligence Committee do just that during a public appearance before the House Rules Committee, and subsequently on the House floor. Ironically, according to one press account, his explanation of what his committee knew and when was partly motivated by a desire to remove any doubt that the Central Intelligence Agency had not fully briefed the committee on mining activities. That's a commendable reason, but at what cost to our intelligence capabilities?

Ultimately, in a move that must have left foreign intelligence services incredulous, the CIA felt obliged to issue a press release that for the first time implicitly and publicly acknowledged its involvement in the mining by citing eleven occasions when it briefed congressional intelligence committees on the matter.

Meanwhile, on the Senate side, an unseemly spectacle unfolded. The Chairman of the Senate Intelligence Committee at the time was Senator Goldwater who excoriated the CIA for not being forthcoming. Shortly thereafter, the committee's then vice-chairman, Senator Moynihan, announced his resignation from the committee, claiming that he was not properly briefed on the mining matter either. That charge was particularly perplexing to the executive branch because at least a week before the Senate voted on the assistance to the Nicaraguan resistance forces, Mr. Moynihan reportedly requested a legal opin-

on from the State Department on the mining question. Nevertheless, CIA director Casey (in a triumph of discretion over valor) apologized to the Senate Intelligence Committee for his perceived sins and Senator Moynihan decided to remain on the committee. The upshot of this bizarre scenario was a serious deterioration in relations between the CIA and Congress with a consequent loss of trust—the most vital ingredient in the oversight process.

All of this, of course, makes a mockery of the oversight system and produced what must be the most *overt* covert program in intelligence annals. If what is at stake here were not so important, we could pause and have a good laugh at ourselves. Unfortunately, that is not the case. Our allies, as well as painstakingly developed intelligence contacts around the world, have taken note of our sorry performance. What they have observed cannot be reassuring. Indeed, they must be wondering why they ever cast their lot with such an unreliable and whimsical partner.

We cannot afford to allow what presently masquerades as congressional intelligence oversight to continue any longer. With politics intruding so heavily on the process, more debacles are inevitable. While nothing equalling the sensationalism of the mining disclosures has occurred since, I am personally aware, as a new member of the House Intelligence Committee, of subsequent leaks that damaged United States intelligence interests in Asia, the Middle East and Central America. Overriding security concerns preclude me from elaborating any further.

It is certainly time, therefore, for a major overhaul. Serious thought must be given to merging the existing intelligence committees into a joint committee composed equally of Republicans and Democrats who, in addition to the requisite trustworthiness, competence and responsibility, also possess the rare restraint to subordinate political considerations to the national interest. Such a committee would have full and exclusive legislative authority over all intelligence matters and be staffed by a small cadre of apolitical professionals with the same exemplary personal qualities as the committee's members.

To be sure, there is opposition to this radical surgery approach, but given the national security ramifications, we have no alternative. Intelligence collection and the conduct of espionage are *uniquely different* and extremely sensitive activities requiring the utmost secrecy. As I see it, the singular nature of these activities dictates a specially structured and very protective legislative oversight process, not one that mimics ordinary congressional procedure. To those critics who cannot envision Senators and Congressmen working well together, it should be

recalled that since World War II there have been a number of distinguished joint committees, including the Joint Committee on Atomic Energy, which exercised oversight and budget authorization powers for years, the Joint Economic Committee and the Joint Committee on Taxation.

Creating a new joint oversight panel along the lines I have suggested would diminish the possibilities for partisan posturing and significantly reduce the number of individuals having access to sensitive information. This would not only minimize the risk of damaging unauthorized disclosures, but it would also substantially increase the likelihood of the Federal Bureau of Investigation and the Justice Department identifying leak sources—something that rarely occurs now because of the large number of individuals in the "intelligence information loop." As the Chairman of the House Intelligence Committee, Representative Lee H. Hamilton, noted in a perceptive article on protecting secrets that appeared in the September 4, 1985, *Congressional Record*, "Leaks are inevitable when so many people handle secrets." I agree and believe that Congress must set an example for the executive branch.

A joint committee would also retain in a more effective and concentrated manner the essentials of congressional oversight over the activities of our intelligence agencies and eliminate the possibility of executive branch intelligence components playing one committee off against the other. Furthermore, it would greatly simplify the problems of handling and storing the classified data that the two intelligence committees now regularly receive from the Intelligence Community.

There are some other practical problems resulting from two committees overseeing the Intelligence Community that would be resolved by a joint committee. As we have learned, the two committees often reflect different perspectives, and they frequently do not focus on the same matters. Moreover, there is not enough interaction or coordination on the issues, contrary to what most of us had assumed. For example, last year the media carried unattributed criticisms from the House Intelligence Committee that the CIA may have overspent its budget in its supposedly covert operations in Nicaragua. This view was not shared by the Senate Intelligence Committee. Confusion reigned!

It is also worth noting that Congress has increasingly insisted upon being briefed and consulted by the executive branch concerning national security and foreign policy questions. A large percentage of these briefings are intelligence-related and require the involvement of high level executive branch officials who are often hard

pressed to meet the demands of both the House and Senate Intelligence Committees. This is particularly true during fast-breaking crisis situations. A consolidated oversight panel would provide *one* point of contact for consultation and briefings in those instances when time is of the essence.

A joint intelligence committee would not only help eliminate the problems just cited, but it would also encourage bipartisan cooperation, and thus ensure a more effective congressional oversight arrangement. To bring this about, I have introduced legislation (House Joint Resolution 7) that now has the support of over one hundred Members of the House and fortunately and correctly is not being viewed in political or ideological terms. Rather, it is seen as an important aspect of a broad-based, non-partisan effort to tighten and enhance this nation's intelligence infrastructure at a time when all of us are much more conscious of security problems because of recent spy scandals that have severely hurt United States and western European intelligence services.

Those backing the joint committee proposal, consequently, come from all points on the political spectrum in both the Senate and the House. A bipartisan Senate select committee studying ways of streamlining the Senate's committee system endorsed the joint intelligence committee concept in its final report to the Senate last December. In addition, ex-CIA directors Richard Helms, James Schlesinger, George Bush and Admiral (Ret.) Stansfield Turner have voiced their support.

Finally, I would like to add one historical note that should be remembered in evaluating the merits of a joint intelligence committee. The mid-1970s probes of United States intelligence activities were for the purpose of establishing better oversight without harming the intelligence mission. To date, that objective has been only partially realized. My recommendation would maintain strong congressional oversight, while safeguarding our overall intelligence capabilities—the original goal of the select committees when they were created.

In short, House Joint Resolution 7 is an idea whose time is now.

A Joint Committee on Intelligence?

 **No**

DAVID F. DURENBERGER
United States Senate

THE WRONG SOLUTION: A JOINT INTELLIGENCE COMMITTEE WOULD BE COUNTERPRODUCTIVE

It's easy to see why Congressman Hyde and other equally astute practitioners and observers of congressional oversight of our nation's intelligence activities might conclude that we ought to replace the House and Senate Intelligence Committees with a new joint committee. After all, wouldn't it be better if fewer Members and staff had access to sensitive intelligence information? And wouldn't life be easier for the Intelligence Community if it had to report to a single joint committee instead of committees in each house of the Congress? Think of the time and effort that could be saved in preparing for hearings.

In my view, however, the benefits of a joint committee would be largely illusory. In fact, I am convinced that a joint committee would be counterproductive from the standpoint of secure, effective congressional oversight of United States intelligence activities, and that such a committee would not ultimately be in the best interest of the Intelligence Community.

Why Not a Joint Committee?

Much of the same logic that argues for a joint committee on intelligence could be applied to Foreign Relations, Judiciary, Commerce, or any of the other areas of "duplication" between the House and Senate. But the fact remains that joint committees are the exception rather than the rule in our legislative branch, and it is easy to see why. The founding fathers, in their wisdom, created a bicameral legislature, and the Constitution assigns certain special prerogatives to the House and Senate respectively. Thus, revenue measures must originate in the House, while the Senate has a special role with respect to the confirmation and treaty making processes.

The House and the Senate are two very different bodies, each with its own way of doing business. The one hundred Members of the Senate have delegated to fifteen of their colleagues certain sensitive responsibilities with respect to oversight of intelligence activities. The membership of the Senate Select Committee on Intelligence is geographically and ideologically diverse, and the resolution which established the committee specifically requires that there be overlapping membership from the committees on Foreign Relations, Armed Services, Appropriations, and the Judiciary. (A rule of the House establishes a similar situation with respect to membership on the House Permanent Select Committee on Intelligence.) Senators are comfortable with their Intelligence Committee because its Members are people who they know and work with on a daily basis.

The same kind of trust is unlikely to be placed in a joint committee, whose membership would include only a very small group of Senators along with Members of the House known to Senators only vaguely if at all. Under these circumstances there would be a tendency for other Senate committees with arguable jurisdictional claims over intelligence activities to assert themselves and to become increasingly involved in matters that are now within the province of the Intelligence Committee. I suspect that the same kind of thing would happen in the House.

This tendency would be reinforced if a joint committee lacked the authority to report legislation authorizing appropriations for the Intelligence Community (most joint committees that have existed in the past have not had authority to report *any* legislation). The budget review process currently carried on by both House and Senate Intelligence Committees is crucial for effective congressional oversight. A joint committee without such authority would have little if any real influence over the conduct of intelligence activities. Of course, other committees in

both Houses would step in to fill the gap—the result would be an *increase* rather than a reduction in the numbers of congressional Members and staff exposed to the nation's most sensitive secrets.

What About Security?

There is, unfortunately, no sure-fire system for preventing unauthorized disclosures of intelligence information from either the legislative or executive branches. The record of the intelligence committees in protecting the sensitive information imparted to them generally has been excellent, and there certainly is no doubt that many more unauthorized disclosures have come from the executive branch than from the Congress.

The Senate Intelligence Committee meets in a hearing room that is state-of-the-art in protection against hostile penetration. Document, physical and communications security is impressive on both the House and Senate sides. In some cases the precautions taken exceed anything done within the Intelligence Community. This is not to say that there is no room for improvement—we always can try to do better. But it simply is not valid to assert that a joint committee necessarily would be more immune from unauthorized disclosures. As former Senate Intelligence Committee Chairman Goldwater pointed out in the *Congressional Record* last year, the Joint Atomic Energy Committee, which is often cited by joint intelligence committee proponents as a model, was in 1949 the source of one of the most damaging leaks in congressional history.

What About Duplication?

There is bound to be some overlapping of effort between the House and Senate Intelligence Committees, but this is not necessarily bad. Over the past several years, in fact, both committees have attempted to get the Intelligence Community to do more in the way of "competitive analysis," i.e., letting different groups of analysts evaluate and debate the meaning of the same data base, and explain irreconcilable differences in analysis to policymakers. Some duplication probably is healthy in intelligence *oversight* as well as in *analysis*. At a minimum, multiple effort helps ensure that all the right questions get asked. I'm not at all sure that we want to leave congressional oversight of our nation's intelligence activities to a very small group of Members and staff.

The Senate, moreover, has certain special interests and powers. The negotiation, ratification, monitoring and verification of arms control agreements, for example, is of intense concern to Members of the Senate, who rely

heavily on the Intelligence Committee for expertise in this area. Obviously, some of the most sensitive intelligence sources and methods are involved here, and pressure would be intense for some other Senate institution to fulfill this role if (as is likely) a joint intelligence committee was to be deemed inadequate.

Oversight is Not a One-Way Street

Proponents of a joint intelligence committee argue that having to report to two committees is a duplicative and unwarranted burden that the Intelligence Community needs to have lifted from its shoulders so that it can concentrate on its mission. This complaint is common to all executive branch agencies, and I do not believe that Intelligence Community representatives spend an inordinate amount of time on Capitol Hill. Once again, some multiple explanation and duplication is inherent in executive branch relations with a bicameral legislature. Much of the burden in this area could be alleviated if the Department of Defense and the Intelligence Community were to be put on a two-year budget cycle. Feasibility studies on this idea currently are underway.

It also is important to remember that congressional oversight has not been a one-way street. The Intelligence Community has benefited greatly from having legislative committees in both Houses focus on its problems. A number of major pieces of legislation enacted since the late 1970s are the direct result of having House and Senate Intelligence Committees. These include the following:

—*Foreign Intelligence Surveillance Act—1978*

Provided clear legal authority for electronic surveillance within the U.S., resolving legal uncertainties that previously had inhibited legitimate intelligence activities.

—*Classified Information Procedures Act—1980*

Provided protection for classified information in connection with pretrial, trial and appellate procedures in criminal cases.

—*Intelligence Oversight Legislation—1980*

Replaced previous requirement for timely notification of covert action operations to eight congressional committees with a requirement for prior notice (except in extraordinary circumstances) to the two Intelligence Committees.

—*Intelligence Identities Protection Act—1982*

Provided criminal penalties for the unauthorized disclosure of the identities of "covert agents."

—*Intelligence Information Act—1984*

Provided CIA with relief from debilitating burdens of FOIA without sacrificing public access to significant information.

—*Intelligence Authorization Acts (Fiscal Years 1979-1986)*

A variety of administrative authority enhancements for the intelligence agencies have been provided in the annual Intelligence Authorization Acts. Examples include death gratuities for CIA officers killed as a result of hostile or terrorist action, greatly increased DCI authority in the benefits and allowances area, expanded authority for CIA to provide security for its installations, enhanced NSA personnel authorities, and a whole new personnel system for DIA.

The existence of committees to which the Intelligence Community can turn for assistance also has been instrumental in helping the Intelligence Community secure amendments to numerous pieces of legislation that otherwise would have impacted adversely on intelligence activities. It is doubtful that a joint committee could effectively perform a similar role.

What is the Answer?

Congressman Hyde perceptively asks whether Congress is capable of practicing *responsible* congressional oversight of intelligence activities once those activities are viewed as an integral part of a foreign policy that has become controversial and the subject of partisan debate. I believe the answer is yes, and that we do not have to dismantle an oversight system that is basically effective and beneficial to the Intelligence Community.

Instead, what we need to do is ensure that we keep the distinction between foreign policy and intelligence firmly in mind and not allow contentious foreign policy issues to be fought out over implementing mechanisms in the context of intelligence oversight. To this end, we should agree on the following basic principles and, working with the executive branch, do our best to ensure that they are followed:

(1) The role of the Intelligence Community is to provide the impartial information and analysis upon which knowledgeable foreign policy decisions can be made, and to serve in certain circumstances as the instrument of United States policy when special activities are required for policy implementation;

(2) The role of the intelligence committees of the

Congress is to provide congressional oversight necessary to ensure that budgetary resources are efficiently allocated and that the Intelligence Community is effectively accomplishing its mission with due regard for the rights of Americans;

(3) Neither the Intelligence Community nor the intelligence committees of the Congress are, or should be, responsible for the formulation of United States foreign policy.

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422 First Street, S.E., Suite 208A
Washington, D.C. 20003
(202) 546-2293

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